

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

STEVEN ALLEN McGEE,

Movant,

v.

CASE NO. 1:08-cv-499

UNITED STATES OF AMERICA,

HON. ROBERT HOLMES BELL

Respondent.

/

MEMORANDUM OPINION AND ORDER

This matter is before the Court on Movant Steven Allen McGee's motion for an order in limine excluding from the § 2255 proceedings all evidence and statements illegally obtained during a May 11, 2001, search of Movant's former residence, and motion for an order compelling the return of all property unlawfully seized. (Dkt. No. 23.)

Movant originally submitted motions to suppress evidence obtained during the May 11, 2001, search on July 10, 2001, in connection with Movant's underlying criminal case. However, the Court never ruled on these motions, or even added them to the judicial record, because Movant pleaded guilty to conspiracy and criminal forfeiture before the Court had an occasion to do so. In considering Movant's § 2255 motion, the Court is not only permitted, but required, to review the entire record developed during the underlying criminal proceeding. *See* Rules Governing Section 2255 Proceedings 4(b), 5(c), 8(a). Parties may,

with court approval, expand the record under Rule 7 of the Rules Governing Section 2255 Proceedings, but the parties have no authority to restrict portions of the record available for Court review. Thus, to the extent the evidence that Movant seeks to exclude is part of the record, Movant may not curtail the Court's consideration of it. To the extent the evidence that Movant seeks to exclude is not part of the record and has not been submitted for consideration under Rule 7 of the Rules Governing Section 2255 Proceedings, it is already outside the scope of Court review in Movant's § 2255 proceeding.

Movant also seeks an order compelling the return of all property unlawfully seized. Movant does not provide the Court with a sufficient legal basis on which to grant his motion, or identify the allegedly unlawfully seized items with enough specificity to permit the Court to grant his motion.

Accordingly,

IT IS HEREBY ORDERED that Movant's motion for an order in limine excluding from the § 2255 proceedings all evidence and statements illegally obtained during a May 11, 2001, search of Movant's former residence, and motion for an order compelling the return of all property unlawfully seized (Dkt. No. 23) is **DENIED**.

Dated: January 21, 2010

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE